IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.405 OF 2005

Artson Engineering Ltd. ... Petitioner.

vs.

1. Hindustan Petroleum Corporation Ltd and another. .... Respondents.

Mr.Kedar Wagle, for Petitioner.

Mr.Siodia with Ms.D.S.Retiwala i/b. M/s.Rustamji & Ginwala, for Respondent no.1.

CORAM: D.K.DESHMUKH,J.

DATED: 9th January, 2006

P.C.:-

1. A preliminary objection has been raised as to the jurisdiction on the ground that the petitioner cannot challenge the Award made by the Arbitrator which has been accepted by the Respondent no.1 because of the minutes of the meeting dated 12.7.1999 and 2.8.1999. Perusal of those minutes shows that except the claims which were

mentioned in those minutes, all other claims were given up by the petitioner. But still the petitioner invoked the arbitration clause. Before the learned Arbitrator an objection was raised as to the maintainability of the arbitral proceedings, in view of the above said minutes. The learned Arbitrator has rejected the submission holding that the minutes of the meeting do not adequately address themselves to the resolution of these disputes, and the learned Arbitrator proceeded to make the Award. The Award has been accepted by the Respondent no.1. The Respondent no.1 had even sent the cheques of the amount which were directed to be paid by the Respondent no.1 to the Petitioner. The Petitioner is challenging the Award in so far as it rejects the claims that were made by the petitioner. The submission of the Respondent no.1 is that in any case the learned Arbitrator had no jurisdiction to entertain the claims which have been rejected by the learned Arbitrator on merits. According to the respondent no.1 in the minutes of the meeting dated 12.7.1999 it is stated that "With this, any claims of M/s.Artson other than the one mentioned in Serial nos.1 to 5 on page 1 will be considered null and void." In the minutes of meeting dated 2.8.1999 it is stated that "This is full and final settlement for M/s.Artson against the said order and no claims, on any account what so ever, other than those specifically mentioned in this minutes shall be payable by the Hindustan Petroleum Corporation Ltd.." According to the Respondent no.1 the claims which were mentioned in those two

minutes have been paid to the petitioner and therefore, the petitioner could not have raised any claims other than the claims which have been mentioned in those two minutes. The defence of the petitioner was that the minutes of meetings did not constitute an agreement and the minutes have been signed by the petitioner only because huge amount were recoverable from the Respondent no.1. The learned Arbitrator has rejected the objection raised by the Respondent no.1 by observing that :-

> "I have examined the earlier correspondence submitted by the Claimants alongwith their Statement of Claims dated 21.05.2001. Copies of a number of protest letters and claim letters have been enclosed with the Statement of Claims. These letters confirm that various disputes were repeatedly raised by the Claimants during the currency of the contract. The Minutes of the Meeting, however, do not adequately address themselves to the resolution of these disputes. It is not evident from these minutes that there has been an amicable settlement between the Claimants and the Respondents. I have therefore, come to the conclusion that the dispute between the Claimants and the Respondents regarding work of turnkey services for

M.S.Maximisation/FCCU Revamp Project at HPCL, Mahul Refinery, Mumbai is arbitrable."

Perusal of the above findings recorded by the learned Arbitrator shows that the learned Arbitrator has rejected the objection raised by Respondent no.1 on the ground that during the currency of the contract the Petitioner had raised various claims. It is only because the Petitioner had raised various claims, the meetings were held between the parties and in those meetings the petitioner had given up the other claims except the claims which were mentioned in the minutes. Perusal of the order of the learned Arbitrator shows that the only defence put up by the Petitioner was that the minutes were signed not because the agreement was arrived at, but because had the petitioner not signed the minutes, huge amount recoverable by the Petitioner from Respondent no.1 would have been withheld by Respondent no.1. The admitted position is that nobody from the Petitioner entered the witness box to explain the circumstances in which the minutes were signed on behalf of the Petitioner. In my opinion, the findings recorded by the learned Arbitrator is clearly contrary to the minutes dated 12.7.1999 and 2.8.1999. Therefore, the findings recorded by the learned Arbitrator that the claims which are not mentioned in the minutes of the meetings dated 12.7.199 and 2.8.1999 were arbitrable is patently illegal and contrary to the material available on record. As I

find that the learned Arbitrator had no jurisdiction to arbitrate the claims which have been placed before him by the petitioner, even assuming that the decision of the learned Arbitrator of rejecting those claims is wrong on merit, still it will not be appropriate for this Court to entertain the petition for the aforesaid reason. The petition therefore, is rejected.